



Mayor & Council of Berlin

10 William Street, Berlin, Maryland 21811

Phone 410-641-2770 Fax 410-641-2316

www.berlinmd.gov



Mayor

Wm. Gee Williams, III

Vice President

Elroy Brittingham, Sr.

Council Members

Dean Burrell, Sr.

Lisa Hall

Paula Lynch

Troy Purnell

BERLIN, MARYLAND

MAYOR AND COUNCIL MEETING

Town Attorney

David Gaskill

MONDAY, NOVEMBER 14, 2011

Town Administrator

Anthony J. Carson, Jr.

COUNCIL CHAMBERS – BERLIN TOWN HALL

10 WILLIAM STREET

BERLIN, MD 21811

EXECUTIVE SESSION6:30 PM

REGULAR SESSION7:00 PM

Anyone having questions about the meetings mentioned above or needing special accommodations should contact Tony Carson, Town Administrator at (410) 641-4144

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TTY users outside Maryland dial 1-800-735-2258

**BERLIN MAYOR AND COUNCIL
COUNCIL MEETING
AGENDA
Monday, November 14, 2011**

6:30 PM EXECUTIVE SESSION - Berlin Conference Room

7:00 PM REGULAR SESSION – Berlin Town Hall Council Chambers

1. Approval of the Minutes for:
 Regular Session of the Mayor and Council on October 24, 2011
 Executive Session of the Mayor and Council on October 24, 2011
 Statement of Closure for Mayor and Council on October 24, 2011
2. Proclamation 2011-12
 A Proclamation recognizing November as National Hospice and Palliative Care Month.
3. PKS Audit – Leslie Michalik
4. Request for Special Sunday Permit – Boggs Disharoon American Legion Post 123
 November 27, 2011 – South Eastern Shore District Meeting
5. Request for Approval of Special Event – New Year's Eve Ball Drop
 December 31, 2011; 8:00 p.m. to 12:30 a.m.
6. Request for Approval of Special Event – Octoberfest 2012
 October 12-13, 2012
7. Approval – Amended Section 3 Plan
8. Approval of General Orders for Police Department
 - a. No. 200 F-1 Use of Force and Reporting Use of Force
 - b. No. 200 J-1 Body Armor
9. Introduction – Ordinance 2011-10; Implementation of SB-315
 An ordinance repealing and re-enacting Chapter 6 of the Town Code, Entitled "Ethics" in its entirety. Public hearing with be held on November 28, 2011.
10. Introduction – Ordinance 2011-11
 An ordinance amending Chapter 30, titled "Alcoholic Beverages" concerning the consumption of alcoholic beverages on public property within the Town of Berlin. Public hearing to be held on November 28, 2011.
11. Motion to Approve – Contract with URS – Engineering Services for Construction and Operational Phase of Lagoon and Spray Site Expansion for Contract Management and Resident Project Representative Services.

12. Departmental Reports
 - a. Finance – Lynn Musgrave
 - b. Deputy Town Administrator – Mary Bohlen
 - c. Public Works – Mike Gibbons
 - d. Water Resources – Jane Kreiter
 - e. Electric – Tim Lawrence
 - f. Police – Arnold Downing
 - g. Planning and Zoning – Chuck Ward
 - h. Human Resources – Jeff Fleetwood
 - i. Economic and Community Development – Michael Day
13. Town Administrator's Report
14. Comments from the Mayor
15. Comments from the Council
16. Comments from the Public
17. Comments from the Press
18. Adjournment

MAYOR AND COUNCIL OF BERLIN, MARYLAND
Regular Session Council Minutes
Monday October 24, 2011

The meeting of the Mayor and Council for Monday, October 24, 2011 was called to order by Mayor Williams at approximately 7:01 p.m. Council members Lynch, Hall, Burrell and Brittingham were present, as well as Town Administrator Tony Carson, Electric Utility Director Tim Lawrence, Deputy Town Administrator Mary Bohlen, Administrative Assistant Sharon Timmons, Human Resources Director Jeff Fleetwood, Police Chief Arnold Downing, Finance Director Lynn Musgrave, Public Works Director Mike Gibbons, Town Attorney David Gaskill, Planning and Zoning Director Chuck Ward, Water Resources Director Jane Kreiter, and Economic Community Development Director Michael Day. Councilmember Purnell was absent.

Following the recitation of the Lord's Prayer and the Pledge of Allegiance, Mayor Williams asked for a motion to approve the Regular Session Minutes of October 11, 2011. Councilmember Lynch made a motion to approve the minutes and the council voted to approve 4-0 with 1 absent. Mayor Williams asked for a motion to approve the Executive Session Minutes of October 11, 2011. Councilmember Lynch made a motion to approve the minutes and council voted to approve 4-0 with 1 absent. Mayor Williams stated that the Executive Session of October 11th was closed to discuss a contract.

Mr. Eric Berlardo of Dueling Way came before the council requesting that the order for closure of the haunted house and walkway in his back yard be rescinded and that he be allowed to re-open. He stated that he had received approval from the Decatur Farms HOA back in September and that on Friday, October 21st Chuck Ward and Tony Carson handed him a letter closing down the event. Planning and Zoning Director Chuck Ward stated that after speaking with Town Attorney Gaskill, Mr. Gaskill determined this to be a business venture and the Town code does not permit this type of activity in an R-1 district. Mr. Berlardo stated that the set up was not a business, but a free event for the children and the community and that neither he nor the HOA were aware of the rules. Mayor Williams stated that the council was concerned about the safety of the children and the amount of traffic this type of activity would attract and that it was not a secret that permission is needed from the council regarding special events. Mr. Berlardo inquired what could be done to revise the activity so that it could continue so that the children's hard work was not in vain. Discussion followed. Councilmember Burrell suggested that Mr. Berlardo and Mr. Ward speak to see if a compromise could be reached ensuring the safety and wellbeing of the community. Several residents and children from the Decatur Farm development spoke in favor of the event. After further discussion, Mr. Ward stated that the event could proceed as is, but only on Halloween night and suggested that Mr. Berlardo begin planning for next year keeping the Town informed throughout the process. Mr. Berlardo requested Mr. Ward to write a letter rescinding the previous letter and a new letter allowing the event to take place on Halloween evening.

Gail West of the Berlin Lions Club came before the council requesting approval of the Special event known as the Berlin Christmas Parade to be held on Thursday, December 1st at 7:00 p.m. Councilmember Hall made a motion to approve the event and council voted to approve 4-0 with 1 absent.

Town Attorney Gaskill explained Resolution 2011-08 which gives the Mayor authority to execute any documents for settlement regarding the MTBE Class Action lawsuit. Councilmember Burrell made a motion to approve Resolution 2011-08 and council voted to approve 4-0 with 1 absent.

Economic and Community Development Director Michael Day explained Resolution 2011-09 to Community Legacy which approves the application and receipt of financing up to \$150,000 for renovation of the public bathrooms located on William Street and the addition of a bathroom at the Berlin Chamber of Commerce building. Councilmember Brittingham made a motion to approve Resolution 2011-09 and council voted to approve 4-0 with 1 absent.

Town Attorney David Gaskill explained the changes implemented by council concerning Ordinance 2011-09 and explained that a first reading and public hearing already had been held. Councilmember Hall made a motion to approve Ordinance 2011-09 as submitted and council voted to approve 4-0 with 1 absent.

Water Resources Director Jane Kreiter explained that the Town's discharge permit requires a forest nutrient management plan for the spray sites and asked for approval of the agreement with Parker Forestry Service in the amount of \$3,490.00. Councilmember Hall made a motion to approve and voted to approve 4-0 with 1 absent.

Public Works Director Mike Gibbons announced the dates for the Fall Bulk Pickup. Those dates are November 2nd for those residents with trash pickup on Tuesdays and Wednesdays and November 16th for those residents with trash pickup on Thursday. Council agreed by consensus to approve the dates.

Departmental reports began with Finance Director Lynn Musgrave reporting that the council would be receiving corrected P&L statements on Tuesday and that she had received the draft audit.

Deputy Town Administrator Mary Bohlen reported that the new nature trail sign was in place at Stephen Decatur Park.

Public Works Director Mike Gibbons reported that prep work had been completed for the asphalt work for Bottle Branch Road, the concrete work would be finished on Jefferson and Washington Streets this week and work would begin on Flower Street next week. Mr. Gibbons also reported that the Public Works had installed a new thermal plastic crosswalk in front of Town Hall last week. Councilmember Burrell inquired about the siding project on the Multipurpose Building and Mr. Gibbons stated that the scope would be started next week.

Water Resources Director Jane Kreiter reported that her department had been moving meters for the upcoming sidewalk work. She continued her report by stating that the pre-bid meeting for the new spray site addition had been held and had drawn a lot of interest. She then stated that the District 2 stormwater meeting had been held and there had been between 40-45 participants.

Electric Utility Director Tim Lawrence reported that the pole relocation project only required that one more pole be moved; the induction lights had been received and installation would begin in the Flower Street area. He continued reporting that the breakers for the substation were scheduled to ship on November 10th.

Police Chief Arnold Downing reported anticipation of a busy Halloween weekend and that his department was preparing for the upcoming holiday season.

Planning and Zoning Director Chuck Ward reported that his department was busy with small permits and that the Cottages project was going well.

Human Resources Director Jeff Fleetwood reported that he would be attending a State Retirement workshop on October 26th, the MML Fall conference on November 2nd and would be a guest speaker at Smyrna High School on November 4th.

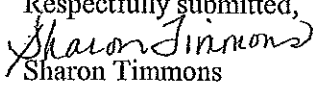
Economic and Community Development Director Michael Day reported that over 2500 people had attended the Town's first Oktoberfest and thanked the Police, Electric and Public Works department for their assistance. He continued reporting that 2 representatives from DHCD were here last week.

promoting their Be Smart Loan program and he had spoken to them regarding the Chamber's heat/air system. Mayor Williams spoke of his appreciation to all the departments assisting with the Octoberfest, especially the Public Works department.

Town Administrator Tony Carson requested approval of 7 purchase orders (201200092, 201201102, 201201116, 201201132, 201201136, 201201137 and 201201138). Mr. Gibbons explained the purchase from Asphalt Kingdom. Councilmember Burrell asked Mr. Gibbons to inspect Showell Street regarding cracks. Councilmember Brittingham made a motion to approve all 7 purchase orders and council voted to approve 4-0 with 1 absent.

Mayor Williams asked for questions from the council. Councilmember Hall stated that she felt the resolution with Decatur Farms and the haunted house was handled in a good way. Councilmember Lynch requested that the Town have a maintenance schedule regarding the ditches throughout town. Mr. Gibbons stated that his department would be working with Water Resources to use the vac truck to clean out the lines. Mrs. Lynch stated that the ditches in Franklin Knoll also need some work.

Mayor Williams asked for comments from the public. There being none, Mayor Williams asked for questions from the press. There being none, Councilmember Burrell made a motion to adjourn and the meeting ended at 9:05 p.m.

Respectfully submitted,

Sharon Timmons
Administrative Assistant



Mayor & Council of Berlin

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PROCLAMATION 2011 – 12

Mayor
Wm. Gee Williams, III

Vice President
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Council Members
Dean Burrell, Sr.
Lisa Hall
Paula Lynch
Troy Purnell

Town Attorney
David Gaskill

Town Administrator
Anthony J. Carson, Jr.

A PROCLAMATION OF THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN RECOGNIZING NOVEMBER 2011 AS NATIONAL HOSPICE AND PALLIATIVE CARE MONTH

WHEREAS, Hospice and palliative care offers the highest quality services and support to patients and family caregivers facing serious and life-limiting illness;

WHEREAS, Skilled and compassionate hospice and palliative care professionals, including physicians, nurses, social workers, therapists, counselors, health aides and clergy provide comprehensive care focused on the wishes of each individual patient; listening to what their patients and families have to say;

WHEREAS, Through pain management, symptom control, caregiver training and assistance, as well as emotional and spiritual support, patients are able to live fully until their final moments surrounded and supported by loved ones, friends, and committed caregivers;

WHEREAS, The provision of quality hospice and palliative care reaffirms our belief in the essential dignity of every person regardless of age, health, or social status, and that every stage of human life deserves to be treated with the utmost respect and care;

WHEREAS, Every year more than 1.5 million Americans living with life-limiting illness and their families, received care from the nation's hospice program in communities throughout the United States. Nationally, more than 468,000 trained volunteers contribute 22 million hours of service to hospice programs each year;

WHEREAS, All people are encouraged to learn more about options of care and to share their wishes with family, loved ones, and their healthcare professionals. Coastal Hospice and Palliative Care works toward helping individuals and families in Berlin facing serious illness, death, and grief to experience the best that humankind can offer.

NOW, THEREFORE, be it resolved that the Mayor and Council of the Town of Berlin, do hereby proclaim November, 2011 as **National Hospice and Palliative Care Month** and encourage all citizens to increase their understanding and awareness of care at the end of life and to observe this month with appropriate activities and programs.

Wm. Gee Williams, III, Mayor

Attest:

Anthony J. Carson, Jr. Town Administrator

ORDINANCE NO. 2011-10

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN, MARYLAND, A MARYLAND MUNICIPAL CORPORATION, REPEALING AND RE-ENACTING CHAPTER SIX (6) OF THE TOWN CODE, ENTITLED "ETHICS," IN ITS ENTIRETY.

NOW, THEREFORE, THE MAYOR AND COUNCIL REPEAL CHAPTER SIX (6) OF THE TOWN CODE IN ITS ENTIRETY AND RE-ENACTS CHAPTER SIX (6) AS FOLLOWS:

~~Chapter 6. ETHICS~~

~~§ 6-1. Applicability.~~

~~The provisions of this chapter shall apply to the following Berlin officials and employees:~~

- ~~_____ A. _____ The Mayor of the Town of Berlin.~~
- ~~_____ B. _____ The members of the Town Council of the Town of Berlin.~~
- ~~_____ C. _____ The members of the Board of Zoning Appeals.~~
- ~~_____ D. _____ The members of the Planning and Zoning Commission.~~
- ~~_____ E. _____ The members of the Historic District Commission.~~
- ~~_____ F. _____ The members of the Board of Election Supervisors.~~
- ~~_____ G. _____ The members of any other official board appointed by the Mayor and/or Town Council subsequent to the passage of this chapter.~~
- ~~_____ H. _____ The employees of the Town.~~

~~§ 6-2. Ethics Commission.~~

~~There shall be a Berlin Ethics Commission, which shall be composed of three members appointed by the Mayor with the approval of the Council. The members shall be appointed for terms of three years, except that, in making the initial appointments, some appointments shall be established for less than three years in order that, as these initial terms expire, all appointments shall be for three years and shall not expire at the same time. Members of the Commission are eligible for reappointment. The Commission shall be advised by the Town Attorney and shall have the following responsibilities:~~

- ~~_____ A. _____ To devise, receive and maintain all forms generated by this chapter.~~
- ~~_____ B. _____ To provide published advisory opinions to persons subject to this chapter as to the applicability of the provisions of this chapter to them.~~
- ~~_____ C. _____ To process and make determinations as to complaints filed by any person alleging violations of this chapter.~~

~~_____ D. To conduct a public information program regarding the purposes and application of this chapter;~~

~~§ 6-3. Conflicts of interest:~~

~~Berlin officials and employees who are subject to this chapter shall not:~~

- ~~_____ A. Participate on behalf of the Town in any matter which would have a direct financial impact on them, their spouse or dependent child or a business entity with which they are affiliated;~~
- ~~_____ B. Hold or acquire an interest of either \$5,000 or 50% or greater in a business entity that has or is negotiating a contract of \$5,000 or more with the Town or is regulated by their agency without disclosing the same;~~
- ~~_____ C. Be employed by a business entity that has or is negotiating a contract of more than \$5,000 with the Town or is regulated by their agency without disclosing the same;~~
- ~~_____ D. Hold any outside employment relationship that would impair their impartiality or independence of judgment;~~
- ~~_____ E. Represent any party, for a contingent fee, before any town body;~~
- ~~_____ F. Within one year following termination of town service, act as a compensated representative of another in connection with any specific matter in which he participated substantially as a town official or employee;~~
- ~~_____ G. Solicit or accept gifts of any value from any person who has or is negotiating a contract with the Town or is regulated by its agency, except where such gifts would not present a conflict of interest as determined by the Commission. For purposes of this section, "gift" includes the transfer of anything of economic value, regardless of form, without adequate and lawful consideration;~~

~~_____ [Amended 11-9-1992 by Ord. No. 92-15]~~

~~_____ H. Use the prestige of their office for their own benefit or that of another, or~~

~~_____ I. Use confidential information acquired in their official town position for their own benefit or that of another;~~

~~§ 6-4. Financial disclosure:~~

- ~~_____ A. The Town officials and employees listed in Subsection C of this section shall file annually, no later than January 31 of each calendar year during which they hold office, a statement with the Commission disclosing any gifts received during the preceding calendar year from any person having a contract with the Town or any person regulated by their agency. The statement shall identify the donor of the gift and its approximate retail value at the time of receipt.~~

~~B. Candidates for elective offices listed in Subsection C of this section shall file statements consistent with the requirements of Subsection A of this section at the time that they file their certificate of candidacy.~~

~~C. Officials and employees required to file:~~

~~(1) The Mayor of the Town of Berlin.~~

~~(2) The members of the Town Council of the Town of Berlin.~~

~~(3) The members of the Board of Zoning Appeals.~~

~~(4) The members of the Planning and Zoning Commission.~~

~~(5) The members of the Historic District Commission.~~

~~(6) The members of the Board of Election Supervisors.~~

~~(7) The members of any other official board appointed by the Mayor and/or Town Council subsequent to the passage of this chapter.~~

~~(8) The employees of the Town.~~

~~D. All town officials and employees or candidates for elective office to positions subject to this chapter shall file a statement with the Commission disclosing any interest or employment, the holding of which would require disqualification from participation pursuant to § 6-3 of this chapter, sufficiently in advance of any anticipated action to allow adequate disclosure to the public.~~

~~E. Disclosure statements filed pursuant to this section shall be maintained by the Commission as public records available for public inspection and copying. A suitable repository for all Ethics Commission records and documents required by this chapter shall be maintained by the Town in its administrative offices.~~

~~§ 6-5. Lobbying disclosure:~~

~~A. Any person who personally appears before any town official or employee with the intent to influence that person in the performance of his official duties and who, in connection with such intent, expends or reasonably expects to expend in any given calendar year in excess of \$500 for food, entertainment or other gifts for such officials shall file a registration statement with the Commission no later than January 15 of the calendar year or within five days after first making such appearance.~~

~~B. The registration statement shall include completed identification of the registrant and of any other person on whose behalf the registrant acts. It shall also identify the subject matter on which the registrant proposes to make such appearance and shall cover a defined registration period not to exceed one calendar year.~~

~~C. Registrants under this section shall file a report within 30 days after the end of any calendar year during which they registered, disclosing the value, date and nature of any food, entertainment or other gift provided to a town official or employee. Where a gift~~

or series of gifts to a single official or employee exceeds \$100 in value, the official or employee shall also be identified.

- ~~D. The registrations and reports filed pursuant to this section shall be maintained by the Commission as public records available for public inspection and copying. A suitable repository for all Ethics Commission records and documents required by this chapter shall be maintained by the Town in its administrative offices.~~

~~§ 6-6. Exemptions and modifications:~~

The Commission may grant exemptions and modifications to the provisions of §§ 6-3 and 6-4 of this chapter if it determines that application of those provisions would:

- ~~A. Constitute an unreasonable invasion of privacy;~~
- ~~B. Significantly reduce the availability of qualified persons for public service, and~~
- ~~C. Not be required to preserve the purposes of this chapter.~~

~~§ 6-7. Enforcement, violations and penalties:~~

- ~~A. The Commission may issue a cease and desist order against any person found to be in violation of this chapter and may seek enforcement of any such order in the Circuit Court for Worcester County, Maryland.~~
- ~~B. A town official or employee found to have violated this chapter may be subject to disciplinary or other appropriate personnel action, including suspension of town salary or other compensation.~~
- ~~C. Violation of this chapter shall be a misdemeanor subject to a fine of up to \$500 or imprisonment of up to one year.~~

CHAPTER 6. ETHICS PROVISIONS

Section 1. Short title.

This chapter may be cited as the Town of Berlin Public Ethics Ordinance.

Section 2. Applicability.

The provisions of this chapter apply to all Town elected officials, employees, and appointees to boards and commissions of the Town of Berlin

Section 3. Ethics Commission.

- (a) There is a Town Ethics Commission that consists of 3 members appointed by the Mayor with the approval of the Council. The members shall be appointed for terms of three (3) years and are eligible for re-appointment.

(b) The Commission shall:

- (1) Devise, receive, and maintain all forms required by this chapter;
- (2) Develop procedures and policies for advisory opinion requests and provide published advisory opinions to persons subject to this chapter regarding the applicability of the provisions of this chapter to them;
- (3) Develop procedures and policies for the processing of complaints to make appropriate determinations regarding complaints filed by any person alleging violations of this chapter; and
- (4) Conduct a public information program regarding the purposes and application of this chapter.

(c) The Town Attorney shall advise the Commission.

(d) The Commission shall certify to the State Ethics Commission on or before October 1 of each year that the Town is in compliance with the requirements of State Government Article, Title 15, Subtitle 8, Annotated Code of Maryland, for elected local officials.

(e) The Commission shall determine if changes to this chapter are required to be in compliance with the requirements of State Government Article, Title 15, Subtitle 8, Annotated Code of Maryland, and shall forward any recommended changes and amendments to the Town Council for enactment.

(f) The Commission may adopt other policies and procedures to assist in the implementation of the Commission's programs established in this chapter.

Section 4. Conflicts of Interest.

(a) In this section, qualified relative means a spouse, parent, child, or sibling.

(b) All Town elected officials, officials appointed to Town boards and commissions subject to this chapter, and employees are subject to this section.

(c) Participation prohibitions. Except as permitted by Commission regulation or opinion, an official or employee may not participate in:

(1) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision of the matter, any matter in which, to the knowledge of the official or employee, the official or employee, or a qualified relative of the official or employee has an interest.

(2) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter, any matter in which any of the following is a party:

- (i) A business entity in which the official or employee has a direct financial interest of which the official or employee may reasonably be expected to know;

- (ii) A business entity for which the official, employee, or a qualified relative of the official or employee is an officer, director, trustee, partner, or employee;
 - (iii) A business entity with which the official or employee or, to the knowledge of the official or employee, a qualified relative is negotiating employment or has any arrangement concerning prospective employment.
 - (iv) If the contract reasonably could be expected to result in a conflict between the private interests of the official or employee and the official duties of the official or employee, a business entity that is a party to an existing contract with the official or employee, or which, to the knowledge of the official or employee, is a party to a contract with a qualified relative;
 - (v) An entity, doing business with the Town, in which a direct financial interest is owned by another entity in which the official or employee has a direct financial interest, if the official or employee may be reasonably expected to know of both direct financial interests; or
 - (vi) A business entity that:
 - (A) The official or employee knows is a creditor or obligee of the official or employee or a qualified relative of the official or employee with respect to a thing of economic value; and
 - (B) As a creditor or obligee, is in a position to directly and substantially affect the interest of the official or employee or a qualified relative of the official or employee.
- (3) A person who is disqualified from participating under paragraphs (1) or (2) of this subsection shall disclose the nature and circumstances of the conflict and may participate or act if:
- (i) The disqualification leaves a body with less than a quorum capable of acting;
 - (ii) The disqualified official or employee is required by law to act; or
 - (iii) The disqualified official or employee is the only person authorized to act.
- (4) The prohibitions of paragraph 1 and 2 of this subsection do not apply if participation is allowed by regulation or opinion of the Commission.
- (d) Employment and financial interest restrictions.
- (1) Except as permitted by regulation of the Commission when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official or employee may not:
 - (i) Be employed by or have a financial interest in any entity:
 - (A) Subject to the authority of the official or employee or the Town agency, board, commission with which the official or employee is affiliated; or

- (B) That is negotiating or has entered a contract with the agency, board, or commission with which the official or employee is affiliated; or
 - (ii) Hold any other employment relationship that would impair the impartiality or independence of judgment of the official or employee.
- (2) This prohibition does not apply to:
 - (i) An official or employee who is appointed to a regulatory or licensing authority pursuant to a statutory requirement that persons subject to the jurisdiction of the authority be represented in appointments to the authority;
 - (ii) Subject to other provisions of law, a member of a board or commission in regard to a financial interest or employment held at the time of appointment, provided the financial interest or employment is publicly disclosed to the appointing authority and the Commission;
 - (iii) An official or employee whose duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest, as permitted by and in accordance with regulations adopted by the Commission; or
 - (iv) Employment or financial interests allowed by regulation of the Commission if the employment does not create a conflict of interest or the appearance of a conflict of interest or the financial interest is disclosed.
- (e) Post-employment limitations and restrictions.
 - (1) A former official or employee may not assist or represent any party other than the Town for compensation in a case, contract, or other specific matter involving the Town if that matter is one in which the former official or employee significantly participated as an official or employee.
 - (2) Until the conclusion of the next regular session that begins after the elected official leaves office, a former member of the Town Council may not assist or represent another party for compensation in a matter that is the subject of legislative action.
- (f) Contingent compensation. Except in a judicial or quasi-judicial proceeding, an official or employee may not assist or represent a party for contingent compensation in any matter before or involving the Town.
- (g) Use of prestige of office.
 - (1) An official or employee may not intentionally use the prestige of office or public position for the private gain of that official or employee or the private gain of another.
 - (2) This subsection does not prohibit the performance of usual and customary constituent services by an elected local official without additional compensation.
- (h) Solicitation and acceptance of gifts.

- (1) An official or employee may not solicit any gift.
- (2) An official or employee may not directly solicit or facilitate the solicitation of a gift, on behalf of another person, from an individual regulated lobbyist.
- (3) An official or employee may not knowingly accept a gift, directly or indirectly, from a person that the official or employee knows or has the reason to know:
 - (i) Is doing business with or seeking to do business with the Town office, agency, board, or commission with which the official or employee is affiliated;
 - (ii) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the official duties of the official or employee;
 - (iii) Is engaged in an activity regulated or controlled by the official's or employee's governmental unit; or
 - (iv) Is a lobbyist with respect to matters within the jurisdiction of the official or employee.
- (4) Paragraph (5) of this subsection does not apply to a gift:
 - (i) That would tend to impair the impartiality and the independence of judgment of the official or employee receiving the gift;
 - (ii) Of significant value that would give the appearance of impairing the impartiality and independence of judgment of the official or employee; or
 - (iii) Of significant value that the recipient official or employee believes or has reason to believe is designed to impair the impartiality and independence of judgment of the official or employee.
- (5) Notwithstanding paragraph (3) of this subsection, an official or employee may accept the following:
 - (i) Meals and beverages consumed in the presence of the donor or sponsoring entity;
 - (ii) Ceremonial gifts or awards that have insignificant monetary value;
 - (iii) Unsolicited gifts of nominal value that do not exceed \$20 in cost or trivial items of informational value;
 - (iv) Reasonable expenses for food, travel, lodging, and scheduled entertainment of the official or the employee at a meeting which is given in return for the participation of the official or employee in a panel or speaking engagement at the meeting;

- (v) Gifts of tickets or free admission extended to an elected local official to attend a charitable, cultural, or political event, if the purpose of this gift or admission is a courtesy or ceremony extended to the elected official's office;
 - (vi) A specific gift or class of gifts that the Commission exempts from the operation of this subsection upon a finding, in writing, that acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of the business of the Town and that the gift is purely personal and private in nature;
 - (vii) Gifts from a person related to the official or employee by blood or marriage, or any other individual who is a member of the household of the official or employee; or
 - (viii) Honoraria for speaking to or participating in a meeting, provided that the offering of the honorarium is in not related in any way to the official's or employee's official position.
- (i) Disclosure of confidential information. Other than in the discharge of official duties, an official or employee may not disclose or use confidential information, that the official or employee acquired by reason of the official's or employee's public position and that is not available to the public, for the economic benefit of the official or employee or that of another person.
- (j) Participation in procurement.
- (1) An individual or a person that employs an individual who assists a Town agency in the drafting of specifications, an invitation for bids, or a request for proposals for a procurement may not submit a bid or proposal for that procurement or assist or represent another person, directly or indirectly, who is submitting a bid or proposal for the procurement.
 - (2) The Commission may establish exemptions from the requirements of this section for providing descriptive literature, sole source procurements, and written comments solicited by the procuring agency.

Section 5. Financial disclosure — local elected officials and candidates to be local elected officials.

- (a) (1) This section applies to all local elected officials and candidates to be local elected officials.
- (2) Except as provided in subsection (b) of this section, a local elected official or a candidate to be a local elected official shall file the financial disclosure statement required under this section:
 - (i) On a form provided by the Commission;
 - (ii) Under oath or affirmation; and
 - (iii) With the Commission.

(3) Deadlines for filing statements.

- (i) An incumbent local elected official shall file a financial disclosure statement annually no later than April 30 of each year for the preceding calendar year.
- (ii) An individual who is appointed to fill a vacancy in an office for which a financial disclosure statement is required and who has not already filed a financial disclosure statement shall file a statement for the preceding calendar year within 30 days after appointment.
- (iii) (A) An individual who, other than by reason of death, leaves an office for which a statement is required shall file a statement within 60 days after leaving the office.

(B) The statement shall cover:

- 1. The calendar year immediately preceding the year in which the individual left office, unless a statement covering that year has already been filed by the individual; and
- 2. The portion of the current calendar year during which the individual held the office.

(b) Candidates to be local elected officials.

- (1) Except for an official who has filed a financial disclosure statement under another provision of this section for the reporting period, a candidate to be an elected local official shall file under a financial disclosure statement each year beginning with the year in which the certificate of candidacy is filed through the year of the election.

(2) A candidate to be an elected local official shall file a statement required under this section:

- (i) In the year the certificate of candidacy is filed, no later than the filing of the certificate of candidacy;
- (ii) In the year of the election, on or before the earlier of April 30 or the last day for the withdrawal of candidacy; and
- (iii) In all other years for which a statement is required, on or before April 30.

(3) A candidate to be an elected official:

- (i) May file the statement required under §5(b)(2)(i) of this chapter with the Town Clerk or Board of Election Supervisors with the certificate of candidacy or with the Commission prior to filing the certificate of candidacy; and
 - (ii) Shall file the statements required under §5(b)(2)(ii) and (iii) with the Commission.
- (4) If a candidate fails to file a statement required by this section after written notice is provided by the Town Clerk or Board of Election Supervisors at least 20 days before the last day for the withdrawal of candidacy, the candidate is deemed to have withdrawn the candidacy.

(5) The Town Clerk or Board of Election Supervisors may not accept any certificate of candidacy unless a statement has been filed in proper form.

(6) Within 30 days of the receipt of a statement required under this section, the Town Clerk or Board of Election Supervisors shall forward the statement to the Commission or the office designated by the Commission.

(c) Public record.

(1) The Commission or office designated by the Commission shall maintain all financial disclosure statements filed under this section.

(2) Financial disclosure statements shall be made available during normal office hours for examination and copying by the public subject to reasonable fees and administrative procedures established by the Commission.

(3) If an individual examines or copies a financial disclosure statement; the Commission or the office designated by the Commission shall record:

(i) The name and home address of the individual reviewing or copying the statement; and

(ii) The name of the person whose financial disclosure statement was examined or copied.

(4) Upon request by the official or employee whose financial disclosure statement was examined or copied, the Commission or the office designated by the Commission shall provide the official with a copy of the name and home address of the person who reviewed the official's financial disclosure statement.

(d) Retention requirements. The Commission or the office designated by the Commission shall retain financial disclosure statements for four years from the date of receipt.

(e) Contents of statement.

(1) Interests in real property.

(i) A statement filed under this section shall include a schedule of all interests in real property wherever located.

(ii) For each interest in real property, the schedule shall include:

(A) The nature of the property and the location by street address, mailing address, or legal description of the property;

(B) The nature and extent of the interest held, including any conditions and encumbrances on the interest;

(C) The date when, the manner in which, and the identity of the person from whom the interest was acquired;

(D) The nature and amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired;

(E) If any interest was transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and the identity of the person to whom the interest was transferred; and

(F) The identity of any other person with an interest in the property.

(2) Interests in corporations and partnerships.

(i) A statement filed under this section shall include a schedule of all interests in any corporation, partnership, limited liability partnership, or limited liability corporation, regardless of whether the corporation or partnership does business with the Town.

(ii) For each interest reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the corporation, partnership, limited liability partnership, or limited liability corporation;

(B) The nature and amount of the interest held, including any conditions and encumbrances on the interest;

(C) With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and, if known, the identity of the person to whom the interest was transferred; and

(D) With respect to any interest acquired during the reporting period:

1. The date when, the manner in which, and the identity of the person from whom the interest was acquired; and

2. The nature and the amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.

(iii) An individual may satisfy the requirement to report the amount of the interest held under item (B)(ii) of this paragraph by reporting, instead of a dollar amount:

(A) For an equity interest in a corporation, the number of shares held and, unless the corporation's stock is publicly traded, the percentage of equity interest held; or

(B) For an equity interest in a partnership, the percentage of equity interest held.

(3) Interests in business entities doing business with Town.

(i) A statement filed under this section shall include a schedule of all interests in any business entity that does business with the Town, other than interests reported

under paragraph (2) of this subsection.

- (ii) For each interest reported under this paragraph, the schedule shall include:
 - (A) The name and address of the principal office of the business entity;
 - (B) The nature and amount of the interest held, including any conditions to and encumbrances in the interest;
 - (C) With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received in exchange for the interest, and, if known, the identity of the person to whom the interest was transferred; and
 - (D) With respect to any interest acquired during the reporting period:
 - 1. The date when, the manner in which, and the identity of the person from whom the interest was acquired; and
 - 2. The nature and the amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.

(4) Gifts.

- (i) A statement filed under this section shall include a schedule of each gift in excess of \$20 in value or a series of gifts totaling \$100 or more received during the reporting period from or on behalf of, directly or indirectly, any one person who does business with or is regulated by the Town.
- (ii) For each gift reported, the schedule shall include:
 - (A) A description of the nature and value of the gift; and
 - (B) The identity of the person from whom, or on behalf of whom, directly or indirectly, the gift was received.

(5) Employment with or interests in entities doing business with the Town.

- (i) A statement filed under this section shall include a schedule of all offices, directorships, and salaried employment by the individual or member of the immediate family of the individual held at any time during the reporting period with entities doing business with the Town.
- (ii) For each position reported under this paragraph, the schedule shall include:
 - (A) The name and address of the principal office of the business entity;
 - (B) The title and nature of the office, directorship, or salaried employment held and the date it commenced; and

- (C) The name of each Town agency with which the entity is involved.
- (6) Indebtedness to entities doing business with the Town.
 - (i) A statement filed under this section shall include a schedule of all liabilities, excluding retail credit accounts, to persons doing business with the Town owed at any time during the reporting period:
 - (A) By the individual; or
 - (B) By a member of the immediate family of the individual if the individual was involved in the transaction giving rise to the liability.
 - (ii) For each liability reported under this paragraph, the schedule shall include:
 - (A) The identity of the person to whom the liability was owed and the date the liability was incurred;
 - (B) The amount of the liability owed as of the end of the reporting period;
 - (C) The terms of payment of the liability and the extent to which the principal amount of the liability was increased or reduced during the year; and
 - (D) The security given, if any, for the liability.
- (7) A statement filed under this section shall include a schedule of the immediate family members of the individual employed by the Town in any capacity at any time during the reporting period.
- (8) Sources of earned income.
 - (i) A statement filed under this section shall include a schedule of the name and address of each place of employment and of each business entity of which the individual or a member of the individual's immediate family was a sole or partial owner and from which the individual or member of the individual's immediate family received earned income, at any time during the reporting period.
 - (ii) A minor child's employment or business ownership need not be disclosed if the agency that employs the individual does not regulate, exercise authority over, or contract with the place of employment or business entity of the minor child.
- (9) A statement filed under this section may also include a schedule of additional interests or information that the individual making the statement wishes to disclose.
- (f) For the purposes of §5(e)(1), (2), and (3) of this chapter, the following interests are considered to be the interests of the individual making the statement:
 - (1) An interest held by a member of the individual's immediate family, if the interest was, at any time during the reporting period, directly or indirectly controlled by the individual.

(2) An interest held by a business entity in which the individual held a 30% or greater interest at any time during the reporting period.

(3) An interest held by a trust or an estate in which, at any time during the reporting period:

(i) The individual held a reversionary interest or was a beneficiary; or

(ii) If a revocable trust, the individual was a settlor.

(g) (1) The Commission shall review the financial disclosure statements submitted under this section for compliance with the provisions of this section and shall notify an individual submitting the statement of any omissions or deficiencies.

(2) The Town Ethics Commission may take appropriate enforcement action to ensure compliance with this section.

Section 6. Financial disclosure — employees and appointed officials.

(a) This section only applies to the following appointed officials and employees:

(1) The Town Administrator and all Department heads.

(b) A statement filed under this section shall be filed with the Commission under oath or affirmation.

(c) On or before April 30 of each year during which an official or employee holds office, an official or employee shall file a statement disclosing gifts received during the preceding calendar year from any person that contracts with or is regulated by the Town, including the name of the donor of the gift and the approximate retail value at the time of receipt.

(d) An official or employee shall disclose employment and interests that raise conflicts of interest or potential conflicts of interest in connection with a specific proposed action by the employee or official sufficiently in advance of the action to provide adequate disclosure to the public.

(e) The Commission shall maintain all disclosure statements filed under this section as public records available for public inspection and copying as provided in §5(c) and (d) of this chapter.

Section 7. Lobbying.

(a) A person shall file a lobbying registration statement with the Commission if the person:

(1) Personally appears before a Town official or employee with the intent to influence that person in performance of the official duties of the official or employee; and

(2) In connection with the intent to influence, expends or reasonably expects to expend in a given calendar year in excess of \$500.00 on food, entertainment, or other gifts for officials or employees of the Town.

(b) A person shall file a registration statement required under this section on or before the later of

January 15 of the calendar year or within 5 days after first performing an act that requires registration in the calendar year.

(c) (1) The registration statement shall identify:

- (i) The registrant;
- (ii) Any other person on whose behalf the registrant acts; and
- (iii) The subject matter on which the registrant proposes to make appearances specified in subsection (a) of this section.

(2) The registration statement shall cover a defined registration period not to exceed one calendar year.

(d) Within 30 days after the end of any calendar year during which a person was registered under this section, the person shall file a report with the Commission disclosing:

(1) The value, date, and nature of any food, entertainment, or other gift provided to a Town official or employee; and

(2) If a gift or series of gifts to a single official or employee exceeds \$100.00 in value, the identity of the official or employee.

(e) The Commission shall maintain the registrations and reports filed under this section as public records available for public inspection and copying for four years after receipt by the Commission.

Section 8. Exemptions and modifications.

The Commission may grant exemptions and modifications to the provisions of §§4 and 6 of this chapter to employees and to appointed members of Town Boards and Commissions, when the Commission finds that an exemption or modification would not be contrary to the purposes of this chapter, and the application of this chapter would:

(a) Constitute an unreasonable invasion of privacy; and

(b) Significantly reduce the availability of qualified persons for public service.

Section 9. Enforcement.

(a) The Commission may:

(1) Assess a late fee of \$2 per day up to a maximum of \$250 for a failure to timely file a financial disclosure statement required under §5 or 6 of this chapter;

(2) Assess a late fee of \$10 per day up to a maximum of \$250 for a failure to file a timely lobbyist registration or lobbyist report required under §7 of this chapter; and

(3) Issue a cease and desist order against any person found to be in violation of this chapter.

- (b) (1) Upon a finding of a violation of any provision of this chapter, the Commission may:
- (i) Issue an order of compliance directing the respondent to cease and desist from the violation;
 - (ii) Issue a reprimand; or
 - (iii) Recommend to the appropriate authority other appropriate discipline of the respondent, including censure or removal if that discipline is authorized by law.
- (2) If the Commission finds that a respondent has violated §7 of this chapter, the Commission may:
- (i) Require a respondent who is a registered lobbyist to file any additional reports or information that reasonably related to the information that is required under §7 of this chapter;
 - (ii) Impose a fine not exceeding \$5,000 for each violation; and
 - (iii) Suspend the registration of an individual registered lobbyist if the Commission finds that the lobbyist has knowingly and willfully violated §7 of this chapter or has been convicted of a criminal offense arising from lobbying activities.
- (c) (1) Upon request of by the Commission, the Town Attorney may file a petition for injunctive or other relief in the circuit court of Worcester County, or in any other court having proper venue for the purpose of requiring compliance with the provisions of this chapter.
- (2) (i) The court may:
- (A) Issue an order to cease and desist from the violation;
 - (B) Except as provided in subparagraph (ii) of this paragraph, void an official action taken by an official or employee with a conflict of interest prohibited by this chapter when the action arises from or concerns the subject matter of the conflict and if the legal action is brought within 90 days of the occurrence of the official action, if the court deems voiding the action to be in the best interest of the public; or
 - (C) Impose a fine of up to \$5,000 for any violation of the provisions of this chapter, with each day upon which the violation occurs constituting a separate offense.
- (ii) A court may not void any official action appropriating public funds, levying taxes, or providing for the issuance of bonds, notes, or other evidences of public obligations.
- (d) In addition to any other enforcement provisions in this chapter, a person who the Commission or a court finds has violated this chapter:
- (1) Is subject to termination or other disciplinary action; and
 - (2) May be suspended from receiving payment of salary or other compensation pending full compliance with the terms of an order of the Commission or a court.

(e) A Town official or employee found to have violated this chapter is subject to disciplinary or other appropriate personnel action, including removal from office, disciplinary action, suspension of salary, or other sanction.

(f) Violation of §7 of this chapter shall be a misdemeanor subject to a fine of up to \$10,000 or imprisonment of up to one year.

(g) A finding of a violation of this chapter by the Commission is public information.

Adopted and effective this _____ day of _____, 2011 by the Mayor and Council of the Town of Berlin, Maryland, by affirmative vote of _____ to _____ opposed, with _____ abstaining.

Elroy Brittingham, Vice-President

Approved and effective this _____ day of _____, 2011 by the Mayor of the Town of Berlin.

Wm. Gee Williams, Mayor

ATTEST: Anthony Carson, Town Administrator

ORDINANCE 2011-11

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN, A MARYLAND MUNICIPAL CORPORATION, AMENDING CHAPTER 30, TITLED "ALCOHOLIC BEVERAGES," CONCERNING THE CONSUMPTION OF ALCOHOLIC BEVERAGES ON PUBLIC PROPERTY WITHIN THE TOWN OF BERLIN

§ 30-1. Possession and consumption in certain places prohibited.

It shall be unlawful for any person to possess, in an open container, or consume any alcoholic beverage or beverages upon any of the public streets, avenues, alleys, sidewalks, public park or public property, or in vehicles upon any of the public streets, avenues or alleys, or in the public parks or on public property within the corporate limits of the Town of Berlin. THE DRINKING OF ALCOHOLIC BEVERAGES SHALL BE PERMITTED ON PUBLIC STREETS, AVENUES, ALLEYS, SIDEWALKS, PUBLIC PARKS OR PUBLIC PROPERTY IF THE DRINKING OF SUCH ALCOHOLIC BEVERAGES IS DONE AS PART OF A SPECIAL EVENT, IN A DESIGNATED AREA, AND DURING A DESIGNATED TIME AS SET FORTH IN A PERMIT GRANTED TO THE ORGANIZERS OF THE SPECIAL EVENT OR TO THEIR DESIGNEES BY THE MAYOR AND COUNCIL, WHICH MAY SET FORTH SUCH OTHER CONDITIONS OF THE PERMIT AS IT DEEMS APPROPRIATE UNDER THE CIRCUMSTANCES.

§ 30-2. Violations and Penalties.

Any violation of the provisions of this chapter shall be punishable as a municipal infraction with a fine of \$25.00 for each and every violation.

THIS ORDINANCE was introduced and read at a meeting of the Town Council held on the _____ day of _____, 2011, and thereafter a statement of the substance of the Ordinance having been published as required by law was finally passed by the Town Council on the _____ day of _____, 2011.

Adopted and effective this _____ day of _____, 2011 by the Mayor and Council of the Town of Berlin, Maryland, by affirmative vote of _____ to _____ opposed, with _____ abstaining.

Elroy Brittingham, Vice-President

Approved and effective this _____ day of _____, 2011 by the Mayor of the Town of Berlin.

Wm. Gee Williams, Mayor

ATTEST: Anthony Carson, Town Administrator

TOWN ADMINISTRATOR'S REPORT
11-14-11

Purchase Orders

PO# 201201227 in the amount of \$3,150.00 to Von Corporation for 20 KVA Servisavor for temporary service restoration.

PO# 201201226 in the amount of \$8,363.00 to Maysteel LLC for capacitor banks. To be submitted for Bid Bond Proceeds.

PO# 201201316 in the amount of \$1,727.85 to Wesco Receivables for capacitor controller and current line sensor. To be submitted for Bid Bond Proceeds.

PO# 201201213 in the amount of \$23,907.00 to General Refrigeration for heat tape for Power Plant cooling tower. To be submitted for Bid Bond Proceeds.

PO# 201201324 in the amount of \$9,347.00 to General Refrigeration for labor and repair work on Power Plant cooling tower. To be submitted for Bid Bonds Proceeds.

PO# 201201341 in the amount of \$3,960.00 to L/B Water Service for 36 water meters.

PO# 201201348 in the amount of \$4,917.50 to Chesapeake Paving & Sealing for asphalt patching on West Branch, Grace and Jefferson Streets along new sidewalk.

PO# 201201350 in the amount of \$2,270.00 to Wainwright's Tire Center for tires for backhoe.

PO# 201201369 in the amount of \$1,002.00 to Sherwood Ford for manifold an bolts for Dump Truck.

PO# 201201377 in the amount of \$3,397.50 to Lawmen Supply for helmets and sights for police officers.

PO# 201201344 in the amount of \$7,500.00 to Diakonia.

Updates